

(Adopted: 2/4/77; Amended: 8/5/77; Amended: 2/5/88;  
Amended: 10/21/1997)

## **RULE 501**

### **General**

This regulation shall apply to all hearings before the Hearing Board of the Antelope Valley Air Pollution Control District (District) except for Orders for Abatement which shall be governed by Regulation VIII.

[SIP: Deletion Challenged, U.S. 9<sup>th</sup> Cir. Case # 97-71117; Deleted 6/27/97 62 FR 34641, 40 CFR 52.220(c)(30)(x)(B); Approved 6/14/78, 43 FR 25684, 40 CFR 52.220(c)(30)(x)(A)]

(Adopted: 12/2/77; Amended: 10/5/79; Amended: 2/5/88;  
Amended: 12/2/88; Amended: 7/10/92; Amended: 10/21/97)

## **RULE 501.1**

### **Assistance To Small Business**

Assistance will be provided to small businesses in filling out and filing of various petitions by the Hearing Board Office staff. Information regarding low-cost financing for air pollution control equipment needed to comply with the Rules and Regulations of the District can be obtained by contacting the Office of the Public Advisor at P.O. Box 4409, Lancaster, Ca 93539-4409 or (805) 723-8070. Small business is defined in Rule 102 as "Small Business."

[SIP: Deletion Challenged, U.S. 9<sup>th</sup> Cir. Case # 97-71117; Deleted 6/27/97 62 FR 34641, 40 CFR 52.220(c)(58)(ii)(C); Approved 9/28/81, 46 FR 47451, 40 CFR 52.220(c)(58)(ii)(B); Approved 3/28/79, 44 FR 18492, 40 CFR 52.220(c)(44)(v)(A)]

(Adopted: 2/4/77; Amended: 8/5/77; Amended: 8/7/81;  
Amended: 4/1/83; Amended: 2/5/88; Amended: 7/10/92  
Amended: 10/21/97)

## **RULE 502**

### **Filing Petitions**

- (a) Requests for hearings shall be initiated as set forth herein.
- (b) The original and eight (8) copies of the petition and supporting documents shall be filed with the Clerk of the Hearing Board; together with the payment of the prescribed fee.
  - (1) Petitions shall be filed with the Clerk of the Hearing Board at District Offices or P. O. Box 4409, Lancaster, Ca. 93534
  - (2) Acceptance of filing shall be confirmed only by the Clerk of the Hearing Board or as otherwise set forth in Rule 506.
- (c) Requests by the Air Pollution Control Officer (APCO) for hearings shall be initiated by serving one (1) copy of the petition upon the holder of a permit or variance, if any. The original and eight copies shall be filed with the Clerk of the Hearing Board.
- (d) Service may be made in person or by mail, and service may be proved by written acknowledgement of the person served or by the affidavit of the person making the service.

[SIP: Deletion Challenged, U.S. 9<sup>th</sup> Cir. Case # 97-71117; Deleted 6/27/97 62 FR 34641, 40 CFR 52.220(c)(137)(vii)(C), 40 CFR 52.220(c)(39)(iii)(F) and 40 CFR 52.220(c)(30)(x)(B); Approved \_\_\_\_\_, \_\_\_\_\_, 40 CFR 52.220(c)(137)(vii)(A); Approved \_\_\_\_\_, \_\_\_\_\_, 40 CFR 52.220(c)(103)(xviii)(A); Approved 9/28/81, 46 FR 47451, 40 CFR 52.220(c)(58)(ii)(B); Approved 9/8/78, 43 FR 40011, 40 CFR 52.220(c)(39)(iii)(C); Approved 6/14/78, 43 FR 25684, 40 CFR 52.220(c)(30)(x)(A)]

(Adopted: 2/5/88; Amended: 10/21/97)

## RULE 503

### Petitions For Variances And Appeals

- (a) The form and content of petitions for variances and appeals shall be made in a manner prescribed and approved by a vote of three members of the Hearing Board. Approved forms of petitions, instructions and information for filing petitions will be furnished by the District and can be obtained at District Offices as set forth in subparagraphs (b)(1) and (b)(2) of Rule 502.
- (b) Attachments to petitions and petitions shall use the printed form supplied by the Clerk of the Hearing Board

[SIP: Deletion Challenged, U.S. 9<sup>th</sup> Cir. Case # 97-71117; Deleted 6/27/97 62 FR 34641, 40 CFR 52.220(c)(44)(v)(B) and 40 CFR 52.220(c)(39)(iii)(F); Approved \_\_\_\_\_, \_\_\_\_\_, 40 CFR 52.220(c)(44)(v)(A); Approved 9/8/78, 43 FR 40011, 40 CFR 52.220(c)(39)(iii)(C)]

(Amended: 2/5/88; Amended: 10/21/97)

## RULE 503.1

### Ex Parte Petitions For Variances

Ex parte petitions for variances may be submitted to the Clerk of the Hearing Board. Petitions shall meet the requirements of Rule 503. Ex parte variances will normally be granted only until such time as a hearing can be held in the matter. Petitions for ex parte variances must be verified.

[SIP: Not SIP]

## RULE 504

### Rules From Which Variances Are Not Allowed

(a) Regulations IX and X

- (1) No variance shall be granted from any rule or rules (or portions thereof) contained in Regulation IX or X, unless such rule or rules (or portions thereof) are more stringent than federal New Source Performance Standards (NSPS) 40 CFR 61, et seq. requirements or National Emission Standards for Hazardous Air Pollutants (NESHAP) 40 CFR 61 or 63, et seq. , except as set forth in subparagraph (2).
- (2) A variance may, if appropriate, be granted from provisions of Regulation IX or X if such provisions are more stringent than requirements of NSPS or NESHAP and conditions are imposed on the variance requiring compliance with applicable NSPS or NESHAP requirements at a minimum; or if a waiver of NSPS or NESHAP requirements has been obtained by the petitioner from the Environmental Protection Agency and a variance would be consistent with the waiver.

(b) No variance shall be granted by the Hearing Board from any rule or provision thereof contained in Regulation XII.

(c) No variance shall be granted by the Hearing Board from any rule setting forth requirements for permits to construct.

(d) No variance shall be granted from the provisions of this Rule 504.

(e) No variance or series of variances, including emergency and interim variances, shall be granted which would allow emissions to exceed an applicable Regulation XIII offset threshold for a period in excess of ninety (90) days from the initial granting of a variance.

[SIP: Deletion Challenged, U.S. 9<sup>th</sup> Cir. Case # 97-71117; Deleted 6/27/97 62 FR 34641, 40 CFR 52.220(c)(39)(iii)(F) and 40 CFR 52.220(c)(32)(iv)(D); Approved 9/8/78, 43 FR 40011, 40 CFR 52.220(c)(39)(iii)(C); Approved 6/14/78, 43 FR 25684, 40 CFR 52.220(c)(32)(iv)(A)]

(Adopted: 8/1/75; Amended: 2/5/88; Amended: 1/5/90;  
Amended: 10/21/97)

## **RULE 505**

### **Lack Of Permit**

The Hearing Board shall not receive or accept a petition for a variance for the operation or use of any article, machine, equipment or other contrivance until a permit to operate has been granted by the APCO and is in effect, or has been denied by APCO, or unless such equipment is exempt from permit requirements.

[SIP: Deletion Challenged, U.S. 9<sup>th</sup> Cir. Case # 97-71117; Deleted 6/27/97 62 FR 34641, 40 CFR 52.220(c)(39)(iii)(F) and 40 CFR 52.220(c)(30)(x)(B); Approved 9/8/78, 43 FR 40011, 40 CFR 52.220(c)(39)(iii)(C); Approved 6/14/78, 43 FR 25684, 40 CFR 52.220(c)(32)(iv)(A)]

(Adopted: 8/1/75; Amended: 2/5/88; Amended: 10/21/97)

## **RULE 506**

### **Failure To Comply With Rules**

The Clerk of the Hearing Board shall not accept for filing any petition which does not comply with Regulation V relating to the form, filing, and service of petitions unless the Chairman or any three members of the Hearing Board direct otherwise and confirm such direction in writing. Such direction need not be made at a meeting of the Hearing Board. The Chairman or any three members, without a meeting, may require the petitioner to state further facts or reframe a petition so as to disclose clearly the issues involved.

[SIP: Deletion Challenged, U.S. 9<sup>th</sup> Cir. Case # 97-71117; Deleted 6/27/97 62 FR 34641, 40 CFR 52.220(c)(39)(iii)(F) and 40 CFR 52.220(c)(30)(x)(B); Approved 9/8/78, 43 FR 40011, 40 CFR 52.220(c)(39)(iii)(C); Approved 6/14/78, 43 FR 25684, 40 CFR 52.220(c)(30)(x)(A)]

(Adopted: 8/1/75; Amended: 10/21/97)

## RULE 507

### Pleadings

Any person may file a written answer, other responsive pleading, memorandum, or brief not less than five days before the hearing unless otherwise permitted by the Hearing Board. Said documents shall be served in the same manner as petitions under Rule 502.

[SIP: Deletion Challenged, U.S. 9<sup>th</sup> Cir. Case # 97-71117; Deleted 6/27/97 62 FR 34641, 40 CFR 52.220(c)(39)(iii)(F) and 40 CFR 52.220(c)(30)(x)(B); Approved 9/8/78, 43 FR 40011, 40 CFR 52.220(c)(39)(iii)(C); Approved 6/14/78, 43 FR 25684, 40 CFR 52.220(c)(30)(x)(A)]

(Adopted: 8/1/75; Amended: 2/5/88; Amended: 10/21/97)

## RULE 508

### Dismissal Of Petition

The petitioner may dismiss his or her petition by notifying the Clerk of the Hearing Board by telephone, followed by a written confirmation at any time before submission of the case to the Hearing Board, without a hearing or meeting of the Hearing Board. The Clerk of the Hearing Board shall notify all interested persons of such dismissal.

[SIP: Deletion Challenged, U.S. 9<sup>th</sup> Cir. Case # 97-71117; Deleted 6/27/97 62 FR 34641, 40 CFR 52.220(c)(39)(iii)(F) and 40 CFR 52.220(c)(30)(x)(B); Approved 9/8/78, 43 FR 40011, 40 CFR 52.220(c)(39)(iii)(C); Approved 6/14/78, 43 FR 25684, 40 CFR 52.220(c)(30)(x)(A)]

(Adopted: 2/4/77; Amended: 8/5/77; Amended: 2/5/88;  
Amended: 10/21/97)

## **RULE 509**

### **Place Of Hearing**

The Hearing Board, by vote of its members, shall establish a schedule of regular meeting times and locations.

[SIP: Deletion Challenged, U.S. 9<sup>th</sup> Cir. Case # 97-71117; Deleted 6/27/97 62 FR 34641, 40 CFR 52.220(c)(39)(iii)(F) and 40 CFR 52.220(c)(30)(x)(B); Approved 9/8/78, 43 FR 40011, 40 CFR 52.220(c)(39)(iii)(C); Approved 6/14/78, 43 FR 25684, 40 CFR 52.220(c)(30)(x)(A)]

(Adopted: 8/1/75; Amended: 2/5/88; Amended: 10/21/97)

## **RULE 510**

### **Notice Of Hearing**

The Clerk of the Hearing Board shall mail or deliver a notice of hearing to the petitioner, the APCO, the holder of the permit or variance involved, if any, and to any person entitled to notice under Division 26, Health & Safety Code (H&S Code).

[SIP: Deletion Challenged, U.S. 9<sup>th</sup> Cir. Case # 97-71117; Deleted 6/27/97 62 FR 34641, 40 CFR 52.220(c)(39)(iii)(F) and 40 CFR 52.220(c)(30)(x)(B); Approved 9/8/78, 43 FR 40011, 40 CFR 52.220(c)(39)(iii)(C); Approved 6/14/78, 43 FR 25684, 40 CFR 52.220(c)(32)(iv)(A)]

## RULE 511

### Evidence

- (a) Oral evidence shall be taken only on oath or affirmation.
- (b) Each party shall have these rights: to call and examine witnesses; to introduce exhibits; to cross/examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of which party first called him to testify; and to rebut the evidence against him. If respondent does not testify in his own behalf, he may be called and examined as if under cross/examination.
- (c) The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. The rules of privilege shall be effective to the same extent that they are now, or hereafter may be, recognized in civil actions, and irrelevant and unduly repetitious evidence shall be excluded.
- (d) The Hearing Board shall allow interested members of the public a reasonable opportunity to testify with regard to a matter under consideration. Interested persons may attend and submit oral or written statements, an original and eight copies, at the hearing; however, it is desirable that written statements be submitted to the Hearing Board five days before the hearing. Statements need not conform to formal rules of evidence, nor with subsections (a), (b), and (c) of this rule. The Chairman may impose reasonable limits on the duration of oral presentations.

[SIP: Deletion Challenged, U.S. 9<sup>th</sup> Cir. Case # 97-71117; Deleted 6/27/97 62 FR 34641, 40 CFR 52.220(c)(39)(iii)(F) and 40 CFR 52.220(c)(30)(x)(B); Approved 9/8/78, 43 FR 40011, 40 CFR 52.220(c)(39)(iii)(C); Approved 6/14/78, 43 FR 25684, 40 CFR 52.220(c)(30)(x)(A)]



(Adopted: 2/5/88; Amended: 10/21/97)

## RULE 511.1

### Subpoenas

- (a) Subpoenas shall be issued by the Chairman of the Hearing Board upon written application of the party requesting its issuance.
- (b) Applications for subpoenas shall, at a minimum, include:
  - (1) a declaration under penalty of perjury as to why such witness or documents are necessary to the proceeding; and
  - (2) a form of subpoena or subpoena duces tecum to be issued.
- (c) Applications for subpoenas shall be submitted to the Clerk of the Hearing Board. The party requesting issuance of the subpoena shall give telephone notice that such application is being made to the opposing party prior to submission of the application.
- (d) If a party objects to the issuance of a subpoena or subpoena duces tecum, the opposing party shall notify the Clerk of the Hearing Board of its opposition and may request that a hearing be scheduled on the matter. The Clerk of the Hearing Board shall notify both parties by telephone of the date, time and location of the hearing.

[SIP: Not SIP]

(Adopted: 8/1/79; Amended: 10/21/97)

## RULE 512

### Preliminary Matters

Preliminary matters such as setting a date for hearing, granting continuances, approving petitions for filing, allowing amendments and other preliminary rulings not determinative of the merits of the case may be made by the Chairman or any three members of the Hearing Board without a hearing or meeting of the Hearing Board and without notice.

[SIP: Deletion Challenged, U.S. 9<sup>th</sup> Cir. Case # 97-71117; Deleted 6/27/97 62 FR 34641, 40 CFR 52.220(c)(39)(iii)(F) and 40 CFR 52.220(c)(30)(x)(B); Approved 9/8/78, 43 FR 40011, 40 CFR 52.220(c)(39)(iii)(C); Approved 6/14/78, 43 FR 25684, 40 CFR 52.220(c)(30)(x)(A)]

(Adopted: 2/5/88; Amended: 10/21/97)

## RULE 512.1

### Prehearing Conference

- (a) Prehearing conferences may be held between a designated member of the Hearing Board and representatives of the petitioner and respondent to discuss procedural matters for complex cases.
- (b) Requests for such conferences may be made by the Hearing Board or either party. Requests for conferences shall be made to the Clerk of the Hearing Board who will notify all affected parties by telephone of the date, time and location of such conference.

[SIP: Not SIP]

(Adopted: 8/1/75; Amended: 2/5/88; Amended: 10/21/97)

## RULE 513

### Administrative Notice

The Hearing Board may take administrative notice of any matters which may be judicially noticed by the courts of this State.

[SIP: Deletion Challenged, U.S. 9<sup>th</sup> Cir. Case # 97-71117; Deleted 6/27/97 62 FR 34641, 40 CFR 52.220(c)(39)(iii)(F) and 40 CFR 52.220(c)(30)(x)(B); Approved 9/8/78, 43 FR 40011, 40 CFR 52.220(c)(39)(iii)(C); Approved 6/14/78, 43 FR 25684, 40 CFR 52.220(c)(30)(x)(A)]

(Adopted: 8/1/75; Amended: 2/5/88; Amended: 10/21/97)

## RULE 514

### Continuances

The Chairman or any three members of the Hearing Board shall grant any continuance of fifteen (15) days or less, concurred in by petitioner, the APCO and by every person who has filed an answer in the action, and may grant any reasonable continuance, in either case such action may be ex parte, without a meeting of the Hearing Board and without prior notice.

[SIP: Deletion Challenged, U.S. 9<sup>th</sup> Cir. Case # 97-71117; Deleted 6/27/97 62 FR 34641, 40 CFR 52.220(c)(39)(iii)(F) and 40 CFR 52.220(c)(30)(x)(B); Approved 9/8/78, 43 FR 40011, 40 CFR 52.220(c)(39)(iii)(C); Approved 6/14/78, 43 FR 25684, 40 CFR 52.220(c)(30)(x)(A)]

(Adopted: 8/1/75; Amended & Reorganized: 2/5/88;  
Amended: 1/5/90; Amended: 3/6/92; Amended: 10/21/97)

## RULE 515

### Findings And Decision

- (a) No variance shall be granted unless the Hearing Board makes all the following findings:
  - (1) That the petitioner is or will be in violation of any rule, regulation or order of the Antelope Valley Air Pollution Control District Hearing Board or applicable section of the California State Health & Safety Code (H&S Code).
  - (2) That due to conditions beyond the reasonable control of the petitioner, requiring compliance would result in either:
    - (A) An arbitrary or unreasonable taking of property, or
    - (B) The practical closing and elimination of a lawful business.
  - (3) That such closing or taking would be without a corresponding benefit in reducing air contaminants.
  - (4) That the applicant for the variance has given consideration to curtailing operations of the source in lieu of obtaining a variance.

- (5) During the period the variance is in effect, that the applicant will reduce excess emissions to the maximum extent feasible.
  - (6) During the period the variance is in effect, that the applicant will monitor or otherwise quantify emission levels from the source, if requested to do so by the District, and report these emission levels to the District pursuant to a schedule established by the District.
- (b) (1) In determining whether or not the petitioner has presented evidence sufficient to make the finding specified in H&S Code §42352(b) and Rule 515 (a)(2), the Hearing Board shall consider, in addition to any other relevant factors, both of the following:
- (A) In determining whether or not conditions exist which are beyond the reasonable control of the petitioner, the Hearing Board shall consider whether or not the petitioner took actions to comply or seek a variance which were timely and reasonable under the circumstances. In so doing, the Hearing Board shall consider actions taken by the petitioner since the adoption of the rule from which the variance is sought.
  - (B) In determining whether or not requiring compliance would result in either an arbitrary or unreasonable taking of property or the practical closing and elimination of a lawful business, the Hearing Board shall consider whether or not an unreasonable burden would be imposed upon the petitioner if immediate compliance is required.
- (2) If the petitioner is a small business as defined in paragraph (3), the Hearing Board shall consider the factors specified in paragraph (b)(1) as follows:
- (A) (i) In determining whether or not the petitioner took timely actions to comply or seek a variance, the Hearing Board shall make specific inquiry into, the reasons for any inaction, including the bases for any claimed ignorance of the requirements from which a variance is sought; and,
  - (ii) In determining whether or not the petitioner took reasonable actions to comply, the Hearing Board shall make specific inquiry into the petitioner's financial and other capabilities to comply.
  - (B) In determining whether or not the burden of requiring immediate compliance would be unreasonable, the Hearing Board shall make specific inquiry into the impact to the petitioner's business and the benefit to the environment which would result if the petitioner was required to immediately comply.

- (3) For purposes of this subdivision, the term "small business" shall have the same meaning as set forth in Rule 102, except that no source which emits four tons or more per year of any non/attainment air contaminant or its precursor shall be a small business.
- (c) The decision shall be reduced to writing, served and filed within thirty (30) days after submission of the cause by the parties thereto, and shall contain a brief statement of facts found to be true, the determination of the issues presented, findings, and the order of the Hearing Board. A copy shall be mailed or delivered to the APCO, the petitioner, and to every person who has filed pleadings or who has appeared as a party in person or by counsel at the hearing. A copy of any decision granting, modifying, or otherwise affecting a variance shall be mailed to the State Air Resources Board within 30 days after the effective date of the decision.
- (d) Formal written Findings and Decision of the Hearing Board shall be prepared by the Hearing Board unless otherwise directed by order of the Hearing Board.
- (e) Whenever parties are directed to prepare the Findings and Decision of the Hearing Board, the Findings and Decision shall be submitted to the Hearing Board within fifteen (15) days after the date of the hearing. The Chairman of the Hearing Board may, upon a request by the preparer of the Findings and Decision, grant an extension of time not to exceed ten (10) days. Prior to submittal, the Findings and Decision shall be approved by the opposing party. When parties cannot agree to the form of the Findings and Decision, a hearing may be requested to determine the form of the Findings and Decision. The Clerk of the Hearing Board shall notify both parties by telephone of the date, time and location of the hearing.

[SIP: Deletion Challenged, U.S. 9<sup>th</sup> Cir. Case # 97-71117; Deleted 6/27/97 62 FR 34641, 40 CFR 52.220(c)(39)(iii)(F) and 40 CFR 52.220(c)(30)(x)(B); Approved 9/8/78, 43 FR 40011, 40 CFR 52.220(c)(39)(iii)(C); Approved 6/14/78, 43 FR 25684, 40 CFR 52.220(c)(30)(x)(A)]

(Adopted: 8/1/75; Amended: 10/21/97)

## RULE 516

### Effective Date Of Decision

Unless otherwise ordered, the decision of the Hearing Board shall become effective upon the concurring vote of three or more of its members.

[SIP: Deletion Challenged, U.S. 9<sup>th</sup> Cir. Case # 97-71117; Deleted 6/27/97 62 FR 34641, 40 CFR 52.220(c)(39)(iii)(F) and 40 CFR 52.220(c)(30)(x)(B); Approved 9/8/78, 43 FR 40011, 40 CFR 52.220(c)(39)(iii)(C); Approved 6/14/78, 43 FR 25684, 40 CFR 52.220(c)(30)(x)(A)]

## RULE 517

### Emergency Variance Procedures - Breakdowns

- (a) No emergency variance shall be granted in the case of a breakdown subject to the provisions of Rule 430 unless the Hearing Board determines that:
  - (1) The occurrence constitutes a breakdown in accordance with the criteria set forth in subsection (b) of Rule 430;
  - (2) The requirements for a variance set forth in Health and Safety Code Sections 42352 and 42353 have been met.
- (b) An emergency variance in the case of a breakdown subject to the provisions of Rule 430 shall remain in effect only for as long as necessary to repair or remedy the emergency or breakdown condition but in no event after a regularly noticed hearing has been held.
- (c) Nothing in this Rule shall be construed as limiting any person's rights to petition the Hearing Board or as limiting the Hearing Board's discretion to grant variances as authorized in Article 3, Chapter 4, Part 4 of Title 26 (commencing with Section 42350) of the Health and Safety Code.
- (d) The emergency variance shall not remain in effect longer than 30 days and shall not be granted when sought to avoid the provisions of California Health and Safety Code Section 40824 or 42351.

[SIP: Deletion Challenged, U.S. 9<sup>th</sup> Cir. Case # 97-71117; Deleted 6/27/97 62 FR 34641, 40 CFR 52.220(c)(39)(iii)(F) and 40 CFR 52.220(c)(30)(x)(B); Approved 9/8/78, 43 FR 40011, 40 CFR 52.220(c)(39)(iii)(C); Approved 6/14/78, 43 FR 25684, 40 CFR 52.220(c)(30)(x)(A)]

## RULE 518

### Variance Procedures For Title V Facilities

(a) Procedures

Any Title V facility as defined in Rule 3000 (b), having a facility permit under Regulation XXX shall comply with the applicable requirements of Regulation V of these Rules and Regulations when seeking a variance from State or District enforcement as authorized by California Health & Safety Code, Division 26, Part 4, Chapter 4, Article 2.

(b) Limitation

On or after the effective date of a Title V program as defined in paragraph (b)(8) of Rule 3000, a Title V facility shall not be granted a variance, or an abatement order which has the effect of a variance, from the Regulation XXX requirements to obtain a Title V permit.

[SIP: Not SIP; See Interim Approval for Federal Operating Permits Program (Title V) 2/27/97 62 FR 8878; Prior Rule 518 - Findings Deletion Challenged, U.S. 9<sup>th</sup> Cir. Case # 97-71117; Deleted 6/27/97 62 FR 34641, 40 CFR 52.220(c)(39)(iii)(F) and 40 CFR 52.220(c)(30)(x)(B); Approved 9/8/78, 43 FR 40011, 40 CFR 52.220(c)(39)(iii)(C); Approved 6/14/78, 43 FR 25684, 40 CFR 52.220(c)(30)(x)(A)]

(Adopted: 8/11/95; Amended: 10/21/97)

## RULE 518.1

### Permit Appeal Procedures For Title V Facilities

(a) Permit Appeals

- (1) The APCO shall submit a copy of any Title V facility permit that includes any federally enforceable requirements, which is issued, or in which any federally enforceable conditions are added or revised, as a result of a hearing before the Hearing Board, to any affected state for review pursuant to Rule 3003 (m) and to the United States Environmental Protection Agency (USEPA) for review pursuant to Rules 3003 (j) and 3003 (k).

(b) Effective Date of Permit

- (1) Such permit, or such federally enforceable terms of the permit, as have been added or revised, shall not be effective as a Title V permit or a revision to a Title V permit until the:
  - (A) expiration of USEPA's forty-five (45) day review period without timely objection; or,
  - (B) receipt of notice from USEPA that no objection will be made; or,
  - (C) resolution, pursuant to Rule 3003 (k), of any timely objection by USEPA.

[SIP: Not SIP; See Interim Approval for Federal Operating Permits Program (Title V) 2/27/97 62 FR 8878]

(Adopted: 1/12/96; Amended: 10/21/97)

## RULE 518.2

### Federal Alternative Operating Conditions

(a) Purpose

This rule establishes procedures by which a Title V facility, as defined in subdivision (b) of Rule 3000 - General, obtaining a variance from the District Hearing Board may obtain approval of an Alternative Operating Condition (AOC) that would be recognized by the United States Environmental Protection Agency (USEPA). Hearing Board approval of an AOC pursuant to the requirements of this rule would shield the petitioner from enforcement pursuant to the federal Clean Air Act of otherwise-applicable requirements specifically addressed by the AOC.

(b) Definitions

- (1) ALTERNATIVE OPERATING CONDITION (AOC) means an order established by the Hearing Board pursuant to subdivision (e) of this rule which authorizes a source to be operated in a specified manner which would otherwise not comply with an applicable requirement of the State Implementation Plan (SIP) or a permit term or condition based on any such applicable requirement.



- (2) **APPLICABLE REQUIREMENTS** means all requirements listed in paragraph(c)(1).
- (3) **EXCESS EMISSIONS** means the amount of emissions from a source, stated in pounds per month, which exceeds the amount of emissions that would be allowed if the source were operated in compliance with an applicable requirement, calculated pursuant to paragraph (h)(1) of this rule.
- (4) **FACILITY** means any permit unit or source, or grouping of permit units or sources, or other air contaminant-emitting activities which are located on one or more contiguous properties within the District, in actual physical contact or separated solely by a public roadway or other public right-of-way, and are owned or operated by the same person (or by persons under common control), or an outer continental shelf (OCS) source as defined in 40 CFR 55.2. Such above-described groupings, if on noncontiguous properties, but connected only by land carrying a pipeline, shall not be considered one facility. Equipment or installations involved in crude oil and gas production in Southern California coastal or OCS waters, and transport of such crude oil and gas in Southern California coastal or OCS waters, shall be included in the same facility which is under the same ownership or use entitlement as the crude oil and gas facility on shore.
- (5) **SOURCE** means any discrete operation, unit or pollutant-emitting activity at a facility.
- (6) **TITLE V FACILITY** means any facility that meets the criteria set forth in subdivision (a), (b) or (c) of Rule 3001 - Applicability.

(c) **Applicability**

- (1) This rule authorizes the District Hearing Board to establish Alternative Operating Conditions (AOC) for Title V facilities. AOCs may be established for the following statute and District rules and regulations, and for federally-enforceable permit terms and conditions that are based on such statute, rules and regulations:
  - (A) Health & Safety Code (H&S Code) §41701;
  - (B) Rules 202, 203, 217, 218 and 221;
  - (C) Regulation IV, except Rules 402 and 430;
  - (D) Regulation VII;
  - (E) Regulation XI;
  - (F) Regulation XV; and

- (G) Regulation XX, except-
  - (i) any provisions which require Permits to Construct or which set forth requirements for Permits to Construct,
  - (ii) missing data provisions of Appendix A, Chapter 2 of Rule 2011 - Requirements for Monitoring, Reporting, and Recordkeeping for Oxides of Sulfur (SO<sub>x</sub>) Emissions, and Appendix A, Chapter 2 of Rule 2012 - Requirements for Monitoring, Reporting, and Recordkeeping for Oxides of Nitrogen (NO<sub>x</sub>) Emissions, and
  - (iii) subdivisions (b) and (d) of Rule 2004 - Requirements, and any permit conditions which state annual Allocations.
- (2) No AOC shall be granted from any federally promulgated rule, regulation or permit condition, including but not limited to the following:
  - (A) the requirement to apply for and obtain an operating permit under Rule 3002 - Requirements, or an authority to construct;
  - (B) any requirement of NSPS, NESHAP or other standard promulgated by the USEPA under 42 U.S.C. §7411 and 7412 (Federal Clean Air Act §111 or §112 );
  - (C) any standard promulgated by the USEPA under Title IV or Title VI of the Clean Air Act; or
  - (D) any requirement contained in a permit issued by the USEPA.
- (3) No AOC shall be granted from any rule or provision for which a variance is not allowed under Rule 504 - Rules for Which Variances Are Not Allowed.

(d) **Modification of Applicable Requirements**

A source shall not be subject to a provision of an applicable requirement specified in paragraph (c)(1) of this rule if the source is subject to an AOC established for such provision. During its term, an AOC shall constitute a revision to the facility's Title V permit for the source.

(e) **Establishment of Alternative Operating Conditions**

- (1) AOCs may be established only by the District Hearing Board upon petition relating to a specified source.

- (2) A petitioner shall not receive an AOC unless all of the following circumstances exist:
- (A) the petitioner is or will be in violation of any applicable requirement(s) listed in paragraph (c)(1) of this rule;
  - (B) due to conditions beyond the reasonable control of the petitioner, requiring compliance would result in either (1) an arbitrary or unreasonable taking of property or (2) the practical closing and elimination of a lawful business. In making those findings pursuant to paragraph (4) where the petitioner is a public agency, the Hearing Board shall consider whether or not requiring immediate compliance would impose an unreasonable burden upon an essential public service. For purposes of this subparagraph, "essential public service" means a prison, detention facility, police or fire-fighting facility, school, health care facility, landfill gas control or processing facility, sewage treatment works, or water delivery operation, if owned and operated by a public agency;
  - (C) the closing or taking would be without a corresponding benefit in reducing air contaminants;
  - (D) the petitioner for the AOC has given consideration to curtailing operations of the source in lieu of obtaining an AOC;
  - (E) during the period the AOC is in effect, the petitioner will reduce excess emissions to the maximum extent feasible;
  - (F) during the period the AOC is in effect, the petitioner will monitor or otherwise quantify emission levels from the source, and report these emission levels to the District pursuant to a schedule established by the District;
  - (G) the AOC will not result in noncompliance with the requirements of any NSPS, NESHAP or other standard promulgated by the USEPA under 42 U.S.C. §§7411 and 7412 (Federal Clean Air Act §111 or §112 ), or any standard or requirement promulgated by the USEPA under Titles IV or VI of the Clean Air Act, or any requirement contained in a permit issued by the USEPA, or other requirement contained in paragraph (c)(2); and
  - (H) any emissions (calculated pursuant to subparagraph (h)(3)(B) of this rule) resulting from the AOC will not, in conjunction with emissions (calculated pursuant to subparagraph (h)(3)(B)) resulting from all other AOCs established by the Hearing Board and in effect at the time, cause an exceedance of the monthly or annual SIP Allowance established pursuant to subdivision (i) of this rule.

- (3) The Hearing Board shall not establish an AOC unless the Board establishes, as part of the AOC, enforceable alternative emission limits, operational requirements, and/or monitoring and record keeping provisions, as set forth in subdivision (g).
- (4) The Hearing Board shall not establish an AOC unless it makes findings that the circumstances described in paragraph (e)(2) exist. The findings shall be based on evidence in the record of a public hearing which is noticed and conducted in compliance with H&S Code §§40820-40865, except in the case of an AOC established by the Board or a single member thereof under circumstances specified in H&S Code §42359 or §42359.5. An AOC established by the Board under circumstances specified in H&S Code §§42359 shall be based on evidence in the record of a public hearing which is conducted pursuant to H&S Code §§40820, 40822, and 40828-40865. An AOC established by a single Board member under circumstances specified in H&S Code §42359.5 shall be based on evidence presented in the form of a petition and declaration signed under penalty of perjury, and may be supplemented by sworn oral testimony.
- (5) The Hearing Board may deny a petition for an AOC if excess emissions resulting from operation of a source pursuant to the AOC would, by themselves, cause an exceedance of a National Ambient Air Quality Standard. The burden of proof on this issue, should it arise, shall be upon the APCO.

(f) **USEPA Objection; Effective Date of Alternative Operating Condition**

- (1) Each AOC shall be subject to review for forty five (45) days by the public, any affected state, and the USEPA. The review period may commence prior to approval of the AOC by the Hearing Board and, in such event, will satisfy this subdivision if the terms of the AOC approved by the Hearing Board do not significantly deviate from the proposed terms which were made available to the public, affected states, and the USEPA.
- (2) If the terms of the AOC approved by the Hearing Board significantly deviate from proposed terms released for review, the approved terms must be subjected to the notice requirements of paragraphs (f)(3) and (f)(4) and the process requirements of paragraph (f)(5).
- (3) The forty five (45) day review period shall commence upon the USEPA's receipt of the following information:
  - (A) a copy of the proposed or issued AOC;
  - (B) information sufficient to support the findings set forth in subdivision (e); and

- (C) the name of any affected state as defined in subdivision (b) of Rule 3000 - General.
- (4) Notification to the public and affected states shall commence upon the date of notice as specified in Rule 3006 - Public Participation, including publication in a daily newspaper of general circulation.
- (5) If USEPA objects to the AOC in writing within the forty five (45) day review period, in the manner set forth in paragraph (k)(1) of Rule 3003 - Applications--
  - (A) the District shall notify the petitioner of USEPA's objection; and
  - (B) the AOC shall be ineffective unless the Hearing Board adopts and submits to USEPA a revised AOC which conforms to such objection or USEPA issues a written rescission to its objection.
- (6) If the USEPA does not object to the AOC, it shall become operative, effective as of the date of issuance by the Hearing Board, subject to the provisions of subdivision (l) of Rule 3003 - Applications. The effective date shall be the date of filing the petition with the Hearing Board if the Board determines that excess emissions during the period between the filing of the petition and the issuance of the AOC by the Hearing Board are quantifiable and that all circumstances specified in paragraph (e)(2) existed during this period.

(g) **Content of Alternative Operating Conditions**

Each AOC shall contain the following provisions, as applicable:

- (1) **Emission Limits**  
If an AOC allows emissions that are greater than an emission limit in an applicable requirement, the Hearing Board shall establish an enforceable alternative emission limit which requires the source to reduce excess emissions to the maximum extent feasible. The Hearing Board may establish an alternative emission limit for any source located at the facility which creates emissions of the subject pollutant that may feasibly be reduced.
- (2) **Operational Requirements**  
If an AOC allows deviation from an applicable operational requirement which is designed to limit or minimize emissions, the Hearing Board shall establish an enforceable alternative operational requirement or emission limit which requires the source to operate in a manner that reduces excess emissions to the maximum extent feasible. The Hearing Board may establish an alternative operational requirement or emission limit for any source located at the facility which creates emissions of the subject pollutant that may feasibly be reduced.

- (3) **Monitoring, Recordkeeping, and Reporting Requirements**  
If the AOC allows deviation from an applicable emissions monitoring, recordkeeping or reporting requirement, the Hearing Board shall establish an enforceable alternative requirement which, to the extent feasible:
- (A) mandates quantification, recordkeeping, and reporting of emissions as accurately, expeditiously, and verifiably as the applicable requirement,
  - (B) complies with the requirements of paragraph (a)(4) of Rule 3004 - Permit Type and Content, and
  - (C) for RECLAIM sources, complies with the RECLAIM protocols for monitoring, recordkeeping, and reporting.
- (4) **Conditions**  
The Hearing Board shall impose conditions, other than those imposed by applicable requirements, which are necessary to ensure quantifiability of emissions increases, and any decreases, resulting from the AOC.
- (5) **Stringency**  
Any alternative requirement or other condition imposed pursuant to this subdivision shall not be more stringent than an applicable requirement, except when consented to by the petitioner for purposes of excess emissions mitigation.
- (6) **Term**  
Each AOC established by the Hearing Board shall include a term during which the AOC shall be in effect. The term shall be determined in accordance with H&S Code §§42352 and 42358. Upon termination of the AOC, the source shall comply with all applicable requirements and the preexisting permit term(s) shall have full force and effect.
- (7) **USEPA Objection**  
Each AOC shall contain a provision stating that if the USEPA objects to the AOC within forty five (45) days, the AOC is ineffective to protect the petitioner from USEPA or citizen enforcement under the federal Clean Air Act for any federally enforceable requirement.

## (h) Emissions Calculations

For purposes of determining whether or not the SIP Allowance is exceeded, as set forth in subparagraph (e)(2)(H) of this rule, the amount of excess emissions resulting from establishment of an AOC, and the amount of any emission reductions resulting from conditions included in the AOC, shall be determined in the following manner:

### (1) Excess Emissions

Excess emissions from the source which is or will be in violation of an applicable requirement shall be calculated as follows:

- (A) calculate calendar monthly mass emissions allowed by the applicable requirement based on the terms of the applicable requirement and projected activity during the term of the AOC;
- (B) calculate calendar monthly mass emissions allowed by the AOC based on any alternative emission limits, operational requirements and other conditions established pursuant to subdivision (g), and projected activity during the term of the AOC; and
- (C) subtract the calendar monthly mass emissions calculated pursuant to subparagraph (A) from the calendar monthly mass emissions calculated pursuant to subparagraph(B).

### (2) Emission Reduction

The amount of emission reduction from a source other than the source which is or will be in violation of an applicable requirement, shall be calculated as follows:

- (A)
  - (i) calculate the sum of actual emissions from the source, as determined from emission fee reports filed pursuant to Rule 301 - Permit Fees, or other credible evidence provided by the petitioner and approved by the Hearing Board, whichever is less, which have occurred during the highest three of the last five (5) years immediately preceding the date of petition, or other appropriate period approved by the Hearing Board if the source had not operated consistently during the preceding five (5) years; and
  - (ii) calculate the monthly mass emissions for the three (3) years or other appropriate period by dividing the sum of actual emissions calculated pursuant to clause (i) by thirty-six (36) or by the number of months in the other appropriate period approved pursuant to clause(i);
- (B) calculate the calendar monthly mass emissions allowed by the AOC based on any alternative emissions limits, operational requirements and other conditions established pursuant to subdivision (g) and projected activity during the term of the AOC; and

- (C) subtract the calendar monthly mass emissions determined pursuant to subparagraph (B) from the monthly mass emissions calculated pursuant to subparagraph (A).
- (3) SIP Allowance Balance Determination
  - (A) The Hearing Board will maintain a record of the balance of emissions in the SIP Allowance for each calendar month.
  - (B) The amount of emissions that will be debited as a result of an AOC will be determined by subtracting the emission reduction calculated pursuant to paragraph (2), and the amount of any emission reduction credits temporarily surrendered by the petitioner pursuant to paragraph (5), from excess emissions calculated pursuant to paragraph (1). Emissions calculated pursuant to this subparagraph shall be subtracted from the monthly and annual SIP Allowance balance for the applicable period.
- (4) The petitioner shall notify the Hearing Board within five (5) days after achieving continuous compliance with an applicable requirement for which an AOC has been issued. Upon notification, the AOC for that applicable requirement shall expire. Any unused emissions previously allocated to a petitioner will be restored by the Hearing Board to the SIP Allowance balance for the same period from which they were originally debited.
- (5) For non-RECLAIM sources, and non-RECLAIM pollutants at RECLAIM sources, the amount of excess emissions calculated pursuant to paragraph (h)(1) may be reduced by the amount of emission reduction credits or offsets approved pursuant to Regulation XIII - New Source Review, which the facility voluntarily relinquishes for the term of the AOC. Relinquishment of ERCs shall not be deemed to satisfy the requirements of subparagraph (e)(2)(E). APCO will not issue a Permit to Construct which relies upon ERCs relinquished pursuant to this paragraph during the period for which such ERCs have been relinquished. The APCO shall not discount the value of ERCs due to relinquishment pursuant to this paragraph.
- (6) An AOC applicable to RECLAIM pollutants emitted by a RECLAIM source shall be deemed to not result in any excess emissions for purposes of this subdivision. This paragraph does not relieve a RECLAIM facility of any obligation pursuant to Regulation XX - RECLAIM.

#### (i) SIP Allowance

The monthly and annual SIP Allowance for each air contaminant shall be the following amounts:



<b>Air Contaminant</b>	<b>Maximum Annual Allowance [lb.</b>	<b>Maximum Monthly Allowance lb.</b>
VOC	197,000	34,000
NO <sub>x</sub>	7,000	650
PM <sub>10</sub>	28,000	7,000
SO <sub>x</sub>	4,200	350
CO	19,000	1,200

(j) Compliance with Alternative Operating Condition

Any source which is subject to an AOC shall comply with such condition at all times during its term. Any violation of a permit term or condition implementing an AOC shall constitute a separate violation of this rule for each day of violation.

(k) Fees

Fees for AOCs will be assessed pursuant to Regulation III - Fees.

(l) Effective Date of Rule

This rule shall be effective upon approval by the USEPA of Regulation XXX - Title V Permits, under Title V of the Clean Air Act, and USEPA approval into the SIP of this rule and a revision to the SIP establishing SIP Allowance for AOCs.

[SIP: Not SIP. See Interim Approval for Federal Operating Permits Program (Title V) 2/27/97 62 FR 8878]

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